



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Robert Fraser, D.C.

Respondent Name

TASB Risk Management Fund

MFDR Tracking Number

M4-11-0387

Carrier's Austin Representative

Box Number 47

MFDR Date Received

September 30, 2010

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "[The claimant's] MMI/IR procedure was a designated doctor exam... Dr. B. Fraser performed the service based on the script from the referring provider, and was not told about the alliance contract."

Amount in Dispute: \$350.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "This claim is part of the Chapter 504.053 which states the provider's treating the claimant shall be part of the Alliance. The treating physician (Abraham Cano, MD) is part of the Alliance and it expressly indicates in the contract that all referring physicians shall be within the Alliance. Dr. Fraser currently is not part of the Alliance; therefore he is not able to treat the claimant. There are a number of physicians within distance of the claimant and treating physician that currently are contracting with the Alliance that he could have been referred to."

Response Submitted by: TASB Risk Management Fund

DISPUTED SERVICES SUMMARY

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
February 18, 2010	Referral Doctor's Examination to Determine Maximum Medical Improvement & Impairment Rating	\$350.00	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all-applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §130.2 sets out the procedures for certification of maximum medical improvement and impairment rating by the treating doctor.

3. Texas Labor Code §408.0041 sets out the requirements for a designated doctor appointment.
4. Texas Labor Code §504.053 defines the requirements for the election of coverage for political subdivisions.
5. Texas Insurance Code Chapter 1305 governs the procedures for Certified Health Care Networks.

Issue

1. What are the services in dispute?
2. What are the applicable statutes to review this dispute?
3. Did the requestor receive an out-of-network referral from the injured employee's treating doctor that has been approved by the network pursuant to §1305.103?
4. Is this dispute eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307?

Findings

1. The requestor stated in their position that "[The claimant's] MMI/IR procedure was a designated doctor exam... Dr. B. Fraser performed the service based on the script from the referring provider, and was not told about the alliance contract." Review of the available documentation finds that this examination was not performed at the order of the division in accordance with Texas Labor Code §408.0041. The division finds that the requestor was performing an examination of maximum medical improvement and impairment rating as a referral doctor acting on behalf of the treating doctor, in accordance with 28 Texas Administrative Code §130.2(a)(1).
2. Claims covered by political subdivisions are governed by the statutes found in Texas Labor Code Chapter 504, including §504.053, which states,
 - (a) A political subdivision that self-insures either individually or collectively shall provide workers' compensation medical benefits to the injured employees of the political subdivision through a workers' compensation health care network certified under Chapter 1305, Insurance Code, if the governing body of the political subdivision determines that provision of those benefits through a network is available to the employees and practical for the political subdivision. A political subdivision may enter into interlocal agreements and other agreements with other political subdivisions to establish or contract with networks under this section.

The insurance carrier indicated in their position statement that this claim is covered under an alliance subject to the statutes found in Texas Insurance Code Chapter 1305. Therefore, this dispute will be reviewed in accordance with these statutes.

3. Texas Insurance Code §1305.006 (3) states that an insurance carrier that establishes or contracts with a network is liable for "health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103."

The requestor therefore has the burden to prove that the condition(s) outlined in the Texas Insurance Code §1305.006 were met in order to be eligible for dispute resolution. Texas Insurance Code §1305.103 requires that

- (e) A treating doctor shall provide health care to the employee for the employee's compensable injury and shall make referrals to other network providers, or request referrals to out-of-network providers if medically necessary services are not available within the network. Referrals to out-of-network providers must be approved by the network. The network shall approve a referral to an out-of-network provider not later than the seventh day after the date on which the referral is requested, or sooner if circumstances and the condition of the employee require expedited approval. If the network denies the referral request, the employee may appeal the decision through the network's complaint process under Subchapter I.

Because the requestor is not part of the network alliance that covers this claim, the requestor has the burden to prove that it obtained the appropriate approved out-of-network referral for the out-of-network healthcare it provided. Review of the submitted documentation does not find a referral was from the treating doctor and approved by the network to treat the injured employee. The Division concludes that the requestor has therefore failed to meet the requirements of Texas Insurance Code §1305.103.

4. The requestor filed this medical fee dispute to the Division asking for resolution pursuant to 28 Texas Administrative Code (TAC) §133.307. The authority of the Division of Workers' Compensation is to apply Texas Labor Code statutes and rules, including 28 TAC §133.307, is limited to the conditions outlined in the applicable portions of the Texas Insurance Code (TIC), Chapter 1305. In particular, TIC §1305.153 (c) provides that "Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation."

The Division finds that the requestor failed to prove in this case that the requirements of Texas Insurance Code §1305.006 (3) were met. Consequently, the services in dispute are not eligible for medical fee dispute resolution pursuant to 28 Texas Administrative Code §133.307.

DECISION

Based upon the documentation submitted by the parties, the Division has determined that this dispute is not eligible for resolution pursuant to 28 Texas Administrative Code §133.307.

Authorized Signature

_____	<u>Laurie Garnes</u>	<u>January 29, 2016</u>
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division, within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form, or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 Texas Administrative Code §141.1(d).